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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/092,096	03/06/2002	Scott Donnel	47607/CM/C945	8479

7590 02/09/2004

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT PAPER NUMBER

1761

DATE MAILED: 02/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/092,096

Applicant(s)

DONNEL ET AL.

Examiner

Steven L. Weinstein

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-21 and 24-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 1-5, 7-21, and 24-29 is/are allowed.
- 6) ☒ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1-5, 7-10, 14-21, 24-26, 28 and 29 rejected under 35 U.S.C. 103(a) as being unpatentable over Kramer et al ('597) in view of Ikeuchi et al ('341), Durso ('447), Pettibout (FRE '682), Jaeger (Ep '328), Lewis ('980) and Sell et al ('681) for the reasons fully and clearly detailed in the Office action Mailed 6/23/03.

Claim 1 now additionally recites that the first and second members are closed and then opened and that they are heated. The art taken as a whole for the reasons detailed in the last Office action would fairly teach to modify the method of Kramer and provide two members with concavities which concavities would have to be closed (to mold the product) and opened (to remove the molded product) and heat both members. Similarly for claim 14. In regard to claim 21, the art taken as a whole also clearly discloses it would have been obvious to sandwich a packaged meat product in a compartment (i.e. mold) having an impression device since it was known to sandwich meat and impress meat with a pattern, with or without a packaging material, as discussed in the Office action mailed 6/23/03.

Claim 11-13 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 plus above, and further in view of Uotani (Jp '257) for the reasons given in the last Office action mailed 6/23/03.

All of applicant's remarks filed 10/24/03 have been fully and carefully considered but are not found to be convincing. Applicant argues each reference separately as if they were applied alone, in a vacuum. The references are applied under 35 USC 103, obviousness, and patentability or obviousness is predicated on what the art taken as a whole teaches. Thus, on page 12 of the amendment, applicant argues what, in his opinion, Kramer fails to teach. For example, it is urged that Kramer fails to teach two members both having concavities. This, of course, was discussed in the last Office action. Kramer et al is not relied on to show two members with concavities nor does the reference have to for the reaction to be proper. As discussed previously, the art taken as a whole teaches two member molds, both having concavities, are notoriously conventional. Whether both members have concavities is clearly an obvious matter of choice and/ or design since the shape of the member will be imparted to the product molded. Thus, as evidenced by the art taken as a whole, if one is attempting to impart to a product symmetry; or a real life simulation or any shape wherein there are no flat sides, then the art taken as a whole clearly teaches that both members should have a concavity. Note that even in Kramer et al, both members have a plurality of protrusions to impart to the product a net like appearance.

In a similar vein, it is urged that Kramer fails to close the members. As discussed previously, Kramer does indeed close the mold with a molding element (24). However, even if Kramer et al did not teach closing the two members, as also discussed previously, the art taken as a whole clearly teaches two part molds are notoriously old and to open or close them is necessary for molding. Page 12 of the amendment

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continues with further urgings, which urgings are based on only one mold member, which urgings are directed to the ^{art} taken as a whole which teaches it would have been obvious to employ two concavity molds.

Applicant then urges it would not have been obvious to combine the secondary art with the primary reference primarily because of deficiencies perceived by applicant in the secondary art which deficiencies are already taught in the primary reference. As a general rule, if the primary reference already has a teaching in question and the secondary reference is not being relied on for this teaching but for some other teaching, then it is not necessary for the secondary reference to show the teaching for the rejection to be proper. For example, it is not necessary for the secondary art to show the specific pattern of protrusions since this is already taught by Kramer et al. The secondary art is relied on to teach various two piece mold members, that it was further known to provide a protrusion pattern on both members (e.g. Ikeuchi), that it was known to compress food between two mold members for shaping (e. g. Durso), Petitbout and Jaeger, etc. Note, in this regard, that contrary to what is urged, Jaeger does disclose a two-member concave wire mesh mold. Similarly, although Lewis does not have to teach protrusions since these are already taught by Kramer et al, Lewis does teach a mold with raised areas and recessed areas to impart the shape he wants, i.e. a turkey.

On page 13 of the remarks, the first few lines, it is not clear what distinction is being made in regard to Ikeuchi. The art taken as a whole including Kramer et al, teach sandwiching food between two mold members and heating the food in the mold member to cook or set the shape one desires to impart to the food.

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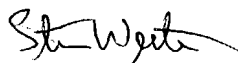
THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Weinstein whose telephone number is (571) 272-1410. The examiner can normally be reached on Monday-Friday 7:00am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

S. Weinstein/af
January 30, 2004


STEVE WEINSTEIN
PRIMARY EXAMINER 1761
Rensen 8A69
2/3/04